

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 96-45
Federal-State Joint Board on)	
Universal Services)	

**NEW EDGE NETWORK, INC. dba
NEW EDGE NETWORKS
PETITION FOR WAIVER**

Pursuant to Section 1.3 of the Commission's Rules¹, New Edge Network, Inc. dba New Edge Networks (New Edge) requests that the Commission grant a waiver from the provisions of the Commission's Universal Service Fund ("USF") rules that requires adjustments to its first quarter 2003 revenue projections, so as to eliminate the effect of the first quarter 2003 projection errors in the annual true-up process.² Like AT&T Corporation (AT&T), SBC Communications and Verizon, New Edge under-estimated its revenue for first quarter of 2003 and, without waiver, would pay a higher amount than is

¹ 47 C.F.R § 1.3.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239, ¶¶20, 36, rel. December 13, 2003.

warranted into the USF. On July 20, 2004, the FCC released an order in CC Docket No. 96-45 granting such a waiver to AT&T, SBC Communications and Verizon³.

In December of 2002, the Commission adopted a new method of calculating a service provider's contribution to the USF. This was an interim measure focused on ensuring the near term sustainability of the USF. In order to adjust for errors in revenue projections, it adopted a true-up process "to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanism based on quarterly revenue data"⁴. Among other revisions, the Commission decided to base carriers' USF contribution on projected, collected end-user interstate revenues, instead of the then existing mechanism that was based on historical, gross-billed revenues.⁵

Unfortunately, because the change became effective after the first quarter of 2003, carriers that under-projected the first quarter revenues in first quarter 2003, like New Edge, will pay more than the "appropriate amount" unless the Commission changes the true-up process for first quarter 2003 or grants a waiver of these provisions. This is because the true-up process will not take into account actual revenues for that quarter but will use only forecasts.

³ FCC 04-170, CC Docket No. 96-45, Releases July 20, 2004.

⁴ Order and Second Order on Reconsideration. 18 FCC Rcd 4818, ¶ 15 (2003).

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239, rel. December 13, 2003.

Section 1.3 provides that the Commission may waive its rules “if good cause therefore is shown”⁶. Generally, a waiver is appropriate if “special circumstances warrant deviation from the general rule and such deviation will serve the public interest”⁷. A waiver is appropriate here because of the unique circumstances of the change in the rules that affect only the first quarter of 2003 and only companies, such as New Edge, that under-projected their revenues for that quarter. This interim process clearly places New Edge at an unfair disadvantage by requiring New Edge to pay true-up amounts in excess of the appropriate contribution for second through fourth quarter 2003.

Section 254 of the Communications Act of 1934, as amended (Act), requires that interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.⁸ Consistent with the intent of the Section 254, this Commission found in Order FCC-04-170 that “Petitioners would contribute more than an equitable share, because they would be assessed a larger true-up amount under the current true-up process than would otherwise occur, because they under-projected their first quarter 2003 revenues.”⁹ This Commission went on to conclude “that the Petitioners have demonstrated special circumstances that warrant deviation from the Commission’s universal service true-up procedures for 2003” and that “this result is consistent with the public interest”.¹⁰ With this backdrop, the Commission waived the current true-up procedures for AT&T, SBC Communications and Verizon.

⁶ 47 C.F.R. § 1.3

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁸ 47 U.S.C. § 254(d).

⁹ FCC 04-170, CC Docket No. 96-45, Releases July 20, 2004.

¹⁰ *Id.*

Accordingly, New Edge respectfully requests that the Commission grant it a waiver and allow the Administrator to net out New Edge's actual first quarter 2003 revenues from its calendar year 2003 revenues to determine its actual revenues for the remainder of 2003.

Respectfully submitted,

/s/ Penny H. Bewick

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